

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

DENISE LAGASSA and
MICHAEL LAGASSA,

Plaintiffs,

vs.

Case No. 2005-4416-NI

LEO COLEMAN,

Defendant.

OPINION AND ORDER

Defendant Leo Coleman moves for summary disposition under MCR 2.116(C)(10).

I. BACKGROUND

Plaintiffs Denise Marie Lagassa and Michael Lagassa filed this action on November 2, 2005 asserting they are married. While driving northbound on Groesbeck near Twelve Mile Road (Roseville) on November 4, 2002, plaintiff Denise Lagassa¹ avers defendant turned directly in front of her, causing an accident.

Accordingly, plaintiff's complaint alleges: I. Negligence and II. Loss of Consortium.

Defendant now moves for summary disposition.

II. STANDARD OF REVIEW

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. The reviewing court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence available to it in the light most favorable to the nonmoving party.

¹Plaintiff Michael Lagassa's claim is wholly derivative. Hence, plaintiff will be used in the singular to refer to plaintiff Denise Lagassa.



Village of Dimondale v Grable, 240 Mich App 553, 566; 618 NW2d 23 (2000). The nonmoving party must proffer evidence establishing a material issue of disputed fact exists for trial to avoid summary disposition. *Id.*

III. ANALYSIS

MCL 500.3135 provides in pertinent part:

(1) A person remains subject to tort liability for noneconomic loss caused by his or her ownership, maintenance, or use of a motor vehicle only if the injured person has suffered death, serious impairment of body function, or permanent serious disfigurement.

(2) For a cause of action for damages pursuant to subsection (1) filed on or after July 26, 1996, all of the following apply:

(a) The issues of whether an injured person has suffered serious impairment of body function or permanent serious disfigurement are questions of law for the court if the court finds either of the following:

(i) There is no factual dispute concerning the nature and extent of the person's injuries.

(ii) There is a factual dispute concerning the nature and extent of the person's injuries, but the dispute is not material to the determination as to whether the person has suffered a serious impairment of body function or permanent serious disfigurement. * * *

(7) As used in this section, "serious impairment of body function" means an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life.

In *Kreiner v Fischer*, 471 Mich 109, 130-131; 683 NW2d 611 (2004), our Supreme Court stated:

Determining whether the impairment affects a plaintiff's "general ability" to lead his normal life requires considering whether the plaintiff is "generally able" to lead his normal life. If he is generally able to do so, then his general ability to lead his normal life has not been affected by the impairment.

Random House Webster's College Dictionary (1991) defines "general" as "considering or dealing with broad, universal, or important aspects." "In general" is defined as "with respect to the entirety; as a whole." *Id.* "Generally" is defined as "with respect to the larger part; for the most part." *Id.* *Webster's New International Dictionary* defines "general" as "the whole; the total; that which comprehends or relates to all, or the chief part; a general proposition, fact, principle, etc.;—opposed to particular; that is, opposed to special." Accordingly, determining whether a plaintiff is "generally able" to lead his normal life requires considering whether the

plaintiff is, "for the most part" able to lead his normal life.

In addition, to "lead" one's normal life contemplates more than a minor interruption in life. To "lead" means, among other things, "to conduct or bring in a particular course." [*Random House Webster's Unabridged Dictionary* (2001)]. Given this meaning, the objectively manifested impairment of an important body function must affect the *course* of a person's life. Accordingly, the effect of the impairment on the course of a plaintiff's entire normal life must be considered. Although some aspects of a plaintiff's entire normal life may be interrupted by the impairment, if, despite those impingements, the course or trajectory of the plaintiff's normal life has not been affected, then the plaintiff's "general ability" to lead his normal life has not been affected and he does not meet the "serious impairment of body function" threshold. [Footnote omitted, emphasis original.]

The *Kreiner* Court explained:

In determining whether the course of plaintiff's normal life has been affected, a court should engage in a multifaceted inquiry, comparing the plaintiff's life before and after the accident as well as the significance of any affected aspects on the course of the plaintiff's overall life. Once this is identified, the court must engage in an objective analysis regarding whether any difference between plaintiff's pre- and post-accident lifestyle has actually affected the plaintiff's "general ability" to conduct the course of his life. Merely "*any* affect" on the plaintiff's life is insufficient because a de minimus effect would not, as objectively viewed, affect the plaintiff's "general ability" to lead his life. [Footnote omitted, emphasis original.]

The following nonexhaustive list of objective factors may be of assistance in evaluating whether the plaintiff's "general ability" to conduct the course of his normal life has been affected: (a) the nature and extent of the impairment, (b) the type and length of treatment required, (c) the duration of the impairment, (d) the extent of any residual impairment[footnote: Self-imposed restrictions, as opposed to physician-imposed restrictions, based on real or perceived pain do not establish this point], and (e) the prognosis for eventual recovery. [Footnote omitted.] This list of factors is not meant to be exclusive nor are any of the individual factors meant to be dispositive by themselves. * * * Instead, in order to determine whether one has suffered a "serious impairment of body function," the totality of the circumstances must be considered, and the ultimate question that must be answered is whether the impairment "affects the person's general ability to conduct the course of his or her normal life." [Footnote omitted.]

Id. at 132-134.

In the instant matter, plaintiff's medical records indicate she complained of left hip pain of a few months duration on November 11, 1997, almost five years before the subject accident. She had also been diagnosed as suffering from degenerative disc disease as early as May 11, 1998 (and

repeatedly since then), almost 4½ years before the subject accident.

When the accident happened, the front of plaintiff's vehicle struck defendant's vehicle broadside. However, plaintiff's airbag did not deploy. At the time of the accident, plaintiff was also restrained by a shoulder and lap belt. She did not seek any medical treatment until four days after the accident.

Plaintiff first saw her primary care physician, Dr. Robert I. Moretsky, on November 8, 2002. Several x-rays taken that day were unremarkable for other than her previously diagnosed degenerative disc disease. Moreover, the first indication that plaintiff *needed assistance* with household chores and was unable to work is noted in an Attending Physician's Report dated March 11, 2003, some four months after the accident. The extent of plaintiff's needed assistance was not apparently memorialized until August 26, 2004.

Dr. Moretsky's "To Whom It May Concern" letter dated August 26, 2004 notes several activities that plaintiff is unable to perform.² Notwithstanding, the record does not suggest, let alone establish, plaintiff regularly engaged in any of these activities or that any inability to perform these activities has detrimentally affected her ability to lead her entire normal life. Significantly, plaintiff is not precluded from most regular activities of daily living or meeting her own care needs.

Additionally, plaintiff presented to Dr. Jeffrey Edwin Middeldorf for an independent medical examination on August 7, 2003. Dr. Middeldorf recounted how plaintiff had undergone several post-accident x-ray, magnetic resonance imaging and electromyographic studies that were either normal or unremarkable for other than her degenerative disc disease. Dr. Middeldorf concluded plaintiff had full active range of motion of her cervical spine and only exhibited minor degenerative changes in her lumbar spine that were age related. Dr. Middeldorf stated plaintiff's

²It is important to note the letter makes reference to a motor vehicle accident on July 17, 2002, almost four months before the subject accident. Query whether this reference is mistaken or plaintiff was involved in an earlier accident.

asserted pain and/or numbness in her right thigh, mid-thoracic spine and lower back were not objectively explainable. Indeed, Dr. Middeldorf was "unable to discern any post-traumatic residual injuries to [plaintiff's] spine in any objective fashion".

Plaintiff's reliance on Dr. Moretsky's August 26, 2004 letter to contradict Dr. Middeldorf's conclusion lacks merit. Dr. Moretsky's letter relies on impermissible hearsay in the form of Dr. Sayyed Sohrab's impression (which is also based on apparent speculation).

Therefore, plaintiff has failed to establish she suffered a serious impairment of body function because of the November 4, 2002 accident.


IV. CONCLUSION

For the reasons set forth above, defendant Leo Coleman's motion for summary disposition is GRANTED under MCR 2.116(C)(10).

Accordingly, plaintiffs Denise Marie Lagassa and Michael Lagassa's complaint is DISMISSED, with prejudice. MCR 2.116(I)(1).

This Opinion and Order resolves the last pending claim in this matter and closes the case. MCR 2.602(A)(3).

IT IS SO ORDERED.


JOHN C. FOSTER, Circuit Judge

Dated: June 30, 2006

JCF/sw

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